

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

C.C., as Parent and Legal Guardian of JANE
DOE, a Minor,

Plaintiff,

v

MARCELLUS COMMUNITY SCHOOLS,
MARCELLUS COMMUNITY SCHOOLS
BOARD OF EDUCATION, and individuals
NANETTE PAULEY, MELINDA BOHAN,
SARAH BISCHOFF, TAMMY CURTIS,
HENRY ESSEX and ROBERT DIETZEL,
In their individual capacities,

Defendants.

CASE NO. 1:23-cv-00255

HON. PAUL L. MALONEY

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Robert Dietzel's Fed. R. Civ. P. 12(b)(6) Motion to Dismiss

NOW COMES Defendant Robert Dietzel ("Mr. Dietzel"), by and through his attorneys, Smith Haughey Rice & Roegge, and for his Fed. R. Civ. P. 12(b)(6) Motion to Dismiss relies on the arguments and authorities contained in his attached supporting Brief, and states:

1. There is simply no legal basis to have asserted these claims against Defendant Robert Dietzel (“Mr. Dietzel”). Plaintiffs allege a continued pattern of bullying and abuse at an elementary school, and that the various school-related Defendants (the “MSC Defendants”) mishandled those issues. But Plaintiffs have also sued Mr. Dietzel, an outside lawyer hired to conduct a Title IX Investigation.

2. Mr. Dietzel was acting as a private attorney in connection with the investigation. As he was not a state actor, Plaintiffs’ constitutional claims against him fail as a matter of law. And even if he were a state actor (he wasn’t), he is entitled to qualified immunity. Plaintiffs’ constitutional claims against Mr. Dietzel must be dismissed. Since Plaintiffs’ ELCRA claim rises and falls with their federal constitutional claims, and since Plaintiffs’ ELCRA claim against Mr. Dietzel fails to mention any act or omission that could be attributable to him, that claim, too, must be dismissed.

3. Plaintiffs have failed to state a claim for gross negligence. The alleged acts and omissions at issue don’t involve Mr. Dietzel. And, on its face, his thorough Title IX investigation could never rise to the high threshold of “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” Plaintiffs’ gross negligence claim must be dismissed.

4. Plaintiffs have failed to state a claim for negligence against Mr. Dietzel. The substance of the negligence claim involves challenging the quality of legal services Mr. Dietzel provided in connection with the investigation. A claim against a lawyer challenging the quality of his legal services is, and can only ever be, a claim for legal malpractice. Since the duty prong of a legal malpractice claim requires the existence of an attorney-client relationship, and Plaintiffs do not allege (and never had) an attorney-client relationship with Mr. Dietzel, their negligence (i.e., legal malpractice) claim against him fails as a matter of law.

5. Mr. Dietzel relies on the arguments and authorities contained in his attached Supporting Brief.

WHEREFORE, Mr. Dietzel respectfully requests this Honorable Court grant this Motion, issue an Order dismissing Plaintiffs' claims against him pursuant to Fed. R. Civ. P. 12(b)(6), and grant any other relief deemed appropriate under the circumstances.

Date: May 15, 2023

By: /s/ Mark A. Gilchrist

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